

20 May 2020

Ms. Dubravka Šimonović  
Special Rapporteur on Violence against Women  
OHCHR-UNOG,  
8-14 Avenue de la Paix  
1211 Geneva 10,  
Switzerland

**RE: Call for submissions to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

Dear Ms. Šimonovic,

I write to you on behalf of the Human Dignity Trust in regard to the call for submissions to the UN SRVAW report on rape as a grave and systematic human rights violation and gender-based violence against women.

The Human Dignity Trust is an organisation of international lawyers that supports local partners to uphold international and constitutional human rights law in countries where private, consensual sexual conduct between adults of the same sex is criminalised. The Trust provides technical legal assistance upon request to local human rights defenders, lawyers and governments seeking to eradicate discriminatory laws and improve protection against violence and hate crimes.

Over the last two years, as part of our programme of work supporting Commonwealth countries to undertake the reform of laws that discriminate against LGBT people, women, children and other marginalised groups, the Trust has produced a comprehensive series of research reports examining sexual offences legislation across the Commonwealth. In particular, the Trust has been interrogating how sexual offences legislation fails to protect women, children, LGBT people and people with disability. We would like to draw your attention to this body of research, in relation to the upcoming thematic report, as it directly answers several of the questions posed in the call for submissions.

The first report in the series is [Good Practice in Human Rights Compliant Sexual Offences Laws in the Commonwealth](#) (the Good Practice Guide), published in 2019.<sup>i</sup> This is a comprehensive pan-Commonwealth review and analysis of good practice, which sets out clear and measurable indicators of human rights-compliant legislation on sexual offences, with a particular focus on rape/sexual assault, marital rape, sexual offences involving children, sexual offences involving people with disability and consensual same-sex sexual conduct. It also provides examples of good practice in these areas from around the Commonwealth.

Building on the criteria developed by the Good Practice Guide, the Trust published in early 2020 *Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation*.<sup>ii</sup> This five-part research study assesses the existing sexual offences legislation in fifty-three member states of the Commonwealth against 17 criteria in the following areas of law:

- **Sexual assault**, including penetrative and non-penetrative sexual assaults;
- **Child sexual assault**, including certain problematic defences;
- **Disability and sexual offences**, including sexual assault laws that criminalise sexual activity with people with disability regardless of their capacity to consent to such activity; and
- **Consensual same-sex sexual activity**, including sodomy, buggery and gross indecency laws and discriminatory age of consent laws.

The criteria assessed by the research that are of most relevance to the call for submissions are largely within the sexual assault issue area. These include an assessment of whether:

1. Definition and scope of the crimes
  - a. Sexual assault crimes are gender-neutral
  - b. Marital rape and sexual assault are criminalised
  - c. Free and voluntary consent is required
  - d. Evidence of resistance is not required
  - e. All non-consensual sexual acts involving penetration are offences
2. Rules of evidence and procedure
  - a. No corroboration is required
  - b. Prior sexual conduct is inadmissible and irrelevant
3. Crimes of power and violence not morality
  - a. Terminology in sexual assault laws is legal and not moralistic

The research has assessed each of the fifty-three Commonwealth member states against these criteria using a ‘traffic light’ system to illustrate whether that law meets the good practice criteria, with explanatory notes where necessary. While these do not track precisely to the questions posed in the call for submissions, we believe that there is substantial overlap, such that this research should prove valuable to the thematic report. We feel this research is relevant to the questions posed by the call for submissions. Primarily, this research goes toward answering questions dealing with the definition and scope of criminal law provisions (in particular, questions 2a through to 2i). It also touches on issues raised in questions 11, 18, 19 and 20.

*Next Steps Towards Reform* is published in five regional reports: [Africa](#), [Asia](#), [Caribbean and the Americas](#), [Europe](#) and [The Pacific](#).

We also draw your attention to our 2016 publication [Breaking the Silence: the criminalisation of lesbian and bisexual women and its impacts](#), the first ever global in-depth analysis of how the criminalisation of same-sex activity specifically impacts on lesbians and bisexual women.<sup>iii</sup> While the criminalisation of same-sex activity affects all LGBT people, the effects of these laws on women have been traditionally under-investigated. This is despite the fact that there are currently 43 countries that specifically criminalise same-sex sexual activity between women. *Breaking the Silence* found substantial anecdotal evidence that the presence of laws that criminalise lesbian and bisexual women left them multiply disadvantaged in terms of sexual violence. Criminalisation fosters an environment where women who have sex with women are targeted for sexual violence on the basis of their sexual orientation. In addition, many lesbians and bisexual women do not report these crimes for fear of the stigma or retribution they will face, and those who do report them often do not have their cases investigated by law enforcement officials. In some instances, the identification of a woman as lesbian has been held to be a mitigating factor in the sentencing of her attacker.

We hope that this extensive body of recent research proves to be of assistance in the preparation of the thematic report. Each of these reports is available via our website ([www.humandignitytrust.org](http://www.humandignitytrust.org)). We have also arranged for hard copies to be sent to your office.

If we can be of further assistance, please do not hesitate to contact me.

Yours sincerely,



Téa Braun  
Director  
Human Dignity Trust

- i Human Dignity Trust, *Good Practice in Human Rights Compliant Sexual Offences Laws in the Commonwealth*. 2019. Available from: [https://www.humandignitytrust.org/wp-content/uploads/resources/Good-Practice-in-Human-Rights-Compliant-Sexual-Offences-Laws-in-the-Commonwealth\\_Final.pdf](https://www.humandignitytrust.org/wp-content/uploads/resources/Good-Practice-in-Human-Rights-Compliant-Sexual-Offences-Laws-in-the-Commonwealth_Final.pdf)
- ii Human Dignity Trust, *Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation*, 2020. Available from: <https://www.humandignitytrust.org/hdt-resources/>.
- iii Human Dignity Trust, *Breaking the Silence: the criminalisation of lesbian and bisexual women and its impacts*, 2016. Available from: <https://www.humandignitytrust.org/wp-content/uploads/resources/Breaking-the-Silence-Criminalisation-of-LB-Women-and-its-Impacts-FINAL.pdf>